Calendar No. 26

104TH CONGRESS, *1st Session* | SENATE | REPORT 104–13

LEGISLATIVE LINE ITEM VETO ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

S. 4

TO GRANT THE POWER TO THE PRESIDENT TO REDUCE BUDGET AUTHORITY

MARCH 7 (legislative day, MARCH 6), 1995.—Ordered to be printed

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MARCH 7 (legislative day, MARCH 6), 1995.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 4]

The Committee on Governmental Affairs, to which was referred the bill S. 4, to grant the power to the President to reduce budget authority, having considered the same, reports thereon without amendment and without recommendation.

I. PURPOSE OF THE MEASURE

The purpose of S. 4, as ordered reported, is to strengthen the President's ability to rescind budget authority. Under the reported bill, presidential recommendations to rescind funds will take effect unless disapproved by Congress during a designated review period.

II. BACKGROUND AND NEED

This bill responds to the overly restrictive effect of the Impoundment Control Act of 1974. Congress passed the statute in response to a series of executive actions in the early 1970s that terminated or severely reduced funds that Congress had appropriated for federal programs. The Impoundment Control Act established two procedures to guide executive officials. If the President wanted to delay the expenditure of budget authority he could submit deferral messages. Either House of Congress could disapprove deferrals at

any time.[1] If the President wanted to terminate budget authority he would have to submit a rescission message. Under the procedure established for rescissions, the funds would be released for expenditure unless the President obtained the approval of both Houses of Congress within 45 days of continuous session.

The statutory procedures for rescission are too stringent to achieve significant savings. From 1974 to the present time, Presidents recommended $72.8 billion in rescissions and Congress agreed to only $22.9 billion. On its own initiative, acting through the regular legislative process, Congress rescinded a total of $70 billion.

The purpose of S. 4 is to reverse the burden by adopting a procedure called "enhanced rescission." Instead of the President having to obtain the approval of both Houses within a specified number of days, Congress would have to disapprove a presidential proposal to rescind funds. The President could then veto the disapproval bill, forcing each House to muster a two-thirds majority to override the veto.

The purpose of enhanced rescission is to confront the serious problem of pork-barrel spending. Each year wasteful and parochial projects—unlikely to pass on their own merits—are tucked into omnibus bills. Often these projects are not germane to the bill. They may be nothing more than extraneous and indefensible riders that hope to make it to safety in the company of a larger bill. They are added routinely as part of the price for getting a bill out of committee or passing it on the floor. Without item-veto power (the state variety) or its functional equivalent (enhanced rescission), Presidents must either sign the entire bill or veto it. S. 4 gives the President a tool to cancel these projects. It will force Congress to address, through the rescission process, the specific merits of these projects. Only if Congress, during this second review, votes to disapprove the President's rescission package and votes successfully to override an expected veto will those projects become law.

III. Difference With State Item Veto

Although debates on S. 4 and other rescission reforms typically speak of "line item vetoes" and giving the President the same tool that 43 Governors now have, the procedures at the state and federal levels are fundamentally different. Governors exercise item-veto authority when a bill is before them. After striking out certain items the balance of the bill becomes law. S. 4 gives the President no such authority. If S. 4 is enacted, the President's power regarding disposal of a bill would be unchanged. The President could either sign the entire bill or veto the entire bill. There would be no authority to veto particular items in the bill.

S. 4 applies to the process after a bill becomes law. For example, if the President signs an appropriations bill into law, he would then be able only to recommend the rescission of budget authority.

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[1] As a result of INS v. Chadha, 462 U.S. 919 (1983), the one-House legislative veto over deferrals was unconstitutional. A federal appellate court later held that the one-House veto in the Impoundment Control Act was inseverable from the deferral authority. Because of that ruling, Presidents could no longer propose deferrals for policy reasons (disagreeing with the purpose of a program). Future deferrals would have to be limited to routine administrative actions. *City of New Haven, Conn.* v. *United States*, 809 F.2d 900 (D.C. Cir. 1987). Congress enacted the principle of the 1987 ruling into law. 101 Stat. 785, sec. 206 (1987).

Those recommendations would take effect unless Congress disapproved them in a bill or joint resolution that must be presented to the President. The President could veto the bill or joint resolution of disapproval, requiring a two-thirds majority in each House for an override of the presidential veto.

For several reasons, the rescission process is more suitable for the Federal Government. First, appropriations bills are itemized at the state level but not at the federal level. Governors can wield item-veto authority because the bills presented to them are highly itemized. It is not unusual for state appropriations bills to descend to items as small as $2,000. Thus, at the time that bills are in front of governors, they can selectively veto the parts that they disapprove and sign the remainder of the bill into law.

The federal budgeting process is different in its essentials. Appropriations bills consist primarily of large lump-sum accounts: $4.6 billion for "Aircraft Procurement, Navy"; $3.3 billion in the Department of Energy for "Energy Supply, Research and Development Activities"; $3.0 billion in the Department of Health and Human Services for "Health Resources and Services" (under the Health Resources and Services Administration); $2.6 billion for the "Operating Expenses" of the Coast Guard, and so forth. Occasionally these lump sums are subdivided to earmark funds for specific projects, but most of the details are placed in conference reports, agency justification materials and other nonstatutory sources. Presidents could not effectively use item-veto authority for the simple reason that appropriations bills do not contain items.

Second, Congress and the executive agencies are in broad agreement that lump-sum funding is an effective way to manage the Federal Government. Because of lump-sum appropriations, federal agencies are able to shift funds within large appropriations accounts and therefore adjust to changing conditions during the course of a fiscal year. By making these shifts inside the account, the overall dollar figure for the activity is not violated and therefore there is no need to seek remedial legislation from Congress. Fund-shifting takes place under established reprogramming procedures, with agencies notifying designated committees of the shifts and in some cases seeking the advance approval of those committees.

For example, the Energy and Water Development Appropriations Act for fiscal year 1995 contains the "Construction, General" account for the Corps of Engineers. A lump sum of $983,668,000 is provided, including 34 earmarks ranging from $67,500 for a project in Rhode Island to a $20 million project in Kentucky. These statutory earmarks total $130,126,500. The conference report, listing 210 projects in 40 states, explains in great detail how the entire $983.6 million is to be allocated. The Corps of Engineers may depart from the specific amounts listed in the conference report by following reprogramming procedures. This flexibility is important for the agency and for Congress in its oversight capacity.

It is possible, although not desirable, to apply the state budgeting system to the Federal Government and give Presidents the kind of line-item veto presently available to governors. To maximize item-veto authority for the President, the details in conference reports, agency justification materials, and other nonstatutory

sources could be transferred to appropriations bills. Presidents would then have the range of choice available to governors. However, placing items in appropriations bills would produce an undesirable rigidity to agency operations and legislative procedures. If Congress placed items in appropriations bills, agencies would have to implement the bill precisely as defined by the individual items. In cases where the specific amounts detailed in the appropriations statutes proved to be insufficient as the fiscal year progressed, agencies could not spend above the specified level. Doing so would violate the law. Agencies and departments would have to come back to Congress and request supplemental funds for some items and rescissions for others, or request a transfer of funds between accounts. Neither Congress nor the agencies want this inflexibility and added workload for the regular legislative process.

IV. Past Efforts To Enact Enhanced Rescission

On several occasions in recent years, the Senate has considered and voted on bills to provide the President with enhanced rescission. On November 9, 1989, Senator Coats' amendment to provide for enhanced rescission was rejected on a vote of 40 to 51 to waive the Budget Act. On June 6, 1990, Senator McCain's enhanced rescission amendment was rejected on a vote of 43 to 50 to waive the Budget Act. Two years later, on February 27, 1992, another enhanced rescission amendment by Senator McCain was unsuccessful on a vote of 44 to 54 to waive the Budget Act. In that same year, on September 17, 1992, an enhanced rescission amendment by Senators McCain and Coats was rejected on a vote of 40 to 56 to waive the Budget Act. The next year, another vote occurred. On March 10, 1993, the Senate voted on an enhanced rescission amendment, sponsored by Senator McCain, to S. 460. The vote to waive the Budget Act failed on a vote of 45 to 52.

V. Legislative History

S. 4 was introduced by Senator Dole on January 4, 1995, for Senators McCain, Coats, Kyl, Helms, Murkowski, Ashcroft, Bond, Grams, and Gramm. The bill was referred jointly to the Committees on the Budget and Governmental Affairs, with instructions that if one committee reports, the other committee would have thirty days to report or be discharged.

The Senate Committee on the Budget held a markup on February 14, 1995, and reported S. 4, as amended, without recommendation on a rollcall vote of 12 to 10. The Budget Committee adopted two amendments. Senator Domenici's amendment, to provide that enhanced rescission authority will cease (sunset) in 2002, was approved by voice vote. Senator Conrad's amendment, to provide that whenever funds are rescinded the discretionary caps will be lowered to ensure that rescinded funds are allocated to deficit reduction ("lock-box"), was approved by voice vote.

A joint hearing was held on January 12, 1995 by the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs to explore the merits of enhanced rescission. The first panel heard testimony from Senators John McCain and Dan Coats and from Representatives Gerald Solomon,

Jack Quinn, Mark Neumann, and Michael Castle. Also testifying at these hearings were Governor William Weld of Massachusetts; Dr. Alice Rivlin, Director of the Office of Management and Budget; Dr. Robert D. Reischauer, Director of the Congressional Budget Office; Judge Gilbert S. Merritt, Chief Judge of the Sixth Circuit and Chairman of the Executive Committee of the Judicial Conference; Joseph Winkelmann of Citizens Against Government Waste; David Keating of the National Taxpayers Union; and Dr. Norman Ornstein of the American Enterprise Institute.

In testifying for the Clinton administration, Dr. Rivlin expressed support for the strongest possible version of presidential authority to cut spending. She noted in her statement that President Clinton has repeatedly favored enactment of item veto legislation. During the 1992 campaign he supported a tool ''to eliminate pork-barrel projects and cut government waste.'' That support was repeated in the February 17, 1993 document, ''A Vision of Change for America,'' and in speeches and letters during the last Congress. In a letter to the congressional leadership early this year, he wrote:

> The line item veto authority will help us cut unnecessary spending and reduce the budget deficit. It is a powerful tool for fighting special interests, who too often are able to win approval of wasteful projects through manipulation of the congressional process, and bury them in massive bills where they are protected from Presidential vetoes. It will increase the accountability of government. I want a strong version of the line item veto, one that enables the President to take direct steps to curb wasteful spending. This is clearly an area where both parties can come together in the national interest, and I look forward to working with the Congress to quickly enact this measure.

Dr. Rivlin emphasized that the President's letter indicated support for ''the strongest version of the line-item veto, one which ensures that he can cut unnecessary spending, reduce the budget deficit, and fight attempts by special interests to fund wasteful projects at taxpayers' expense. The Administration believes that the line-item veto must be broad in scope and become effective as soon as possible.'' She also noted that S. 4 and H.R. 2 (passed by the House on February 6, 1995) ''give the President the most new authority, providing that Presidential proposals stand unless both Houses pass a bill to overturn them and the bill is enacted.'' Bills such as S. 14 (expedited rescission), she said, ''provide less new authority.''

Dr. Robert D. Reischauer, Director of the Congressional Budget Office, noted in his testimony that the procedure in S. 4 (enhanced rescission) ''provide the President with greater potential power than a constitutionally approved item veto.'' He explained that a constitutional amendment would limit the President to approving or vetoing dollar amounts only to the extent that they appear in appropriations bills. However, the dollar figures in appropriations bills are usually large lump-sum amounts, not itemized details. The President could not reach within those dollar amounts. With enhanced rescission, the President is able to reach within appropriation accounts and select specific amounts. Because of this au-

thority, the President can propose rescissions for all or part of an appropriated amount. To that extent, Dr. Reischauer said, enhanced rescission "is equivalent to some of the strongest item veto powers possessed by state governors. Such 'reduction veto' authority is possessed by chief executives in only 11 states."

VI. Committee Action and Tabulation of Votes

The Committee on Governmental Affairs held an additional hearing on February 23, 1995. Testimony was heard from Senator Bill Bradley, Representative Peter Blute, Louis Fisher of the Congressional Research Service, and Allen Schick of the George Mason University. Issues explored during the hearings included the extension of rescission authority to tax expenditures and the definition of targeted tax benefits; comparisons between S. 4, S. 14, and the House-passed enhanced rescission bill, H.R. 2; exempting the judiciary from the President's exercise of rescission authority; the question of whether S. 4 and S. 14 could reach entitlements such as social security; and the balance between the executive and legislative branches, including the issue of how much legislative power may be delegated to the President.

On March 2, 1995, the Senate Governmental Affairs Committee held a markup on S. 4. Senator Glenn moved that the Committee report S. 4 with recommendation. Senator Stevens then moved to amend the Glenn motion, to report S. 4 from the Committee without recommendation. A vote then occurred on the Stevens amendment to the Glenn motion. The Stevens amendment prevailed with roll call vote of 9 to 6. The following Senators were recorded as voting AYE: Roth, Stevens, Cohen (by proxy), Thompson, Cochran, Grassley, McCain (by proxy), Smith, and Lieberman. The following Senators were recorded as voting NO: Glenn, Nunn, Levin, Pryor, Akaka and Dorgan. A voice vote then occurred on the Glenn motion as amended by Senator Stevens to report S. 4 from the Governmental Affairs Committee without recommendation.

VII. Committee Amendments

No amendments were adopted to S. 4 in the March 2, 1995, markup of the Senate Governmental Affairs Committee.

VIII. Section-by-Section Analysis

Section 1 provides the short title of the "Legislative Line Item Veto Act of 1995" for S. 4.

Section 2 enhances the President's spending control by amending the Impoundment Control Act of 1974 to add at the end thereof the following new title: "Title XI—Legislative Line Item Veto Rescission Authority." Section 2 consists of two parts: Part A, defining the legislative line item veto rescission authority, and Part B, providing for congressional consideration of legislative line item veto rescissions.

Part A—Legislative Line Item Veto Rescission Authority.—Part A grants the President enhanced rescission authority and establishes conditions for its use. Notwithstanding the provisions of Part B of Title X and subject to the provisions of Part B of the new title, Title XI, the President may rescind "all or part" of any budget au-

thority if the President determines that the rescissions (1) would help balance the Federal budget, reduce the Federal budget deficit, or reduce the public debt, (2) will not impair any essential Governmental functions, and (3) will not harm the national interest. In satisfying these conditions, the President must notify the Congress of proposed rescissions in one of two occasions: (1) by means of a special message not later than twenty calendar days (not including Saturdays, Sundays, or holidays) after the date of enactment of a regular or supplemental appropriations Act or a joint resolution making continuing appropriations providing such budget authority, or (2) notifies the Congress of proposed rescissions by special message accompanying the submission of the President's budget to Congress provided that such rescissions have not been proposed previously for the fiscal year. The President shall submit a separate rescission message for each appropriations bill defined above.

The President's proposed rescission becomes effective unless disapproved by Congress. Any amount of budget authority rescinded under Title XI as set forth in a President's special message shall be deemed canceled unless during a congressional review period a rescission disapproval bill is enacted into law.

The congressional review period consists of twenty calendar days of session, during which Congress must complete action on the rescission disapproval bill, with that bill presented to the President for signature or veto. If Congress passes a rescission disapproval bill, the President has an additional ten days (not including Sundays) to exercise his authority to sign or veto the bill. If the President vetoes the rescission disapproval bill, an additional five calendar days of session is available for Congress to consider an override of the veto.

If a President's special message is transmitted under this section during any Congress and the last session of such Congress adjourns sine die before the expiration of the period described above (twenty days for congressional consideration of a rescission disapproval bill, ten days for presidential review, and five days for a congressional override), the rescission shall not take effect. The message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the review period, with respect to the message, shall run beginning after such first day.

For example, if Congress considers an override at the end of the second session and adjourns sine die before the expiration of the five days set aside for that consideration, at the start of the next Congress the entire period of thirty-five days begins anew. On the other hand, if Congress considered an override at the end of the first session and adjourned before the expiration of the five-day period, the calculation is different. Whatever time Congress consumed would be deleted from the period of thirty-five days. If Congress used thirty-three of the thirty-five days, when the second session began Congress would have two days remaining to consider the override.

Section 1102 of Title XI defines the term "rescission disapproval bill" to mean a bill or joint resolution that only disapproves a rescission of budget authority, in whole, proposed to be rescinded in a President's special message.

Section 1103 of Title XI provides for a "lock-box" to ensure deficit reduction. If Congress fails to disapprove a President's rescission within the period provided for legislative review, the President shall, on the day after the period has expired, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescissions to reflect the amount of the rescission. If Congress fails to disapprove a President's rescission within the period provided for legislative review, the chairs of the House and Senate Committees on the Budget shall, on the day after the period has expired, revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect the amount of the rescissions. If Congress fails to disapprove a rescission of direct spending within the period provided for legislative review, the President shall, on the day after the period has expired, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the amount of the rescission.

Part B—Congressional Consideration of Legislative Line Item Veto Rescissions.—Part B establishes the procedures to be followed by Congress when acting on a rescission disapproval bill. Whenever the President rescinds any budget authority under Title XI, the President shall transmit to both Houses of Congress a special message specifying (1) the amount of budget authority rescinded; (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved; (3) the reasons and justifications for the determination to rescind budget authority pursuant to section 1101(a)(1); (4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the rescission; and (5) all facts, circumstances, and considerations relating to or bearing upon the rescission and the decision to effect the rescission, and to the maximum extent practicable, the estimated effect of the rescission upon the objects, purposes, and programs for which the budget authority is provided.

Section 1112 provides for the transmission of special messages and their publication in the Federal Register. Each special message under Title XI shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committees of each chamber and printed as a document of each House. Any special message transmitted under Title XI shall be printed in the first issue of the Federal Register published after such transmittal.

Section 1113 explains the procedures in the Senate. Any rescission disapproval bill introduced with respect to a special message shall be referred to the appropriate committees of the House of Representatives and the Senate. Senate debate on any rescission disapproval bill and debatable motions and appeals shall be limited to not more than ten hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Senate debate on any debatable motion

or appeal shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal. The time in opposition shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any debatable motion or appeal. A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed one, not counting any day on which the Senate is not in session) is not in order.

Provisions are established for points of order. It shall not be in order in the Senate or the House of Representatives to consider any rescission disapproval bill that relates to any matter other than the rescission of budget authority transmitted in the President's special message. It shall not be in order in either chamber to consider any amendment to a rescission disapproval bill. The above two provisions on points of order may be waived or suspended in the Senate only by a vote of three-fifths of the members duly chosen and sworn.

Section 1114 establishes a sunset for the President's rescission authority under Title XI, which shall cease to be effective on September 30, 2002.

IX. Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 2, 1995.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 4, the Legislative Line Item Veto Act of 1995, as ordered reported without recommendation by the Senate Committee on Governmental Affairs on March 2, 1995.

S. 4 would grant the President the authority to rescind all or part of any budget authority. To exercise this authority, the President must transmit a special message to both houses of Congress specifying each amount rescinded from appropriations within a particular bill that has just been enacted. Furthermore, the message must include the governmental functions involved, the reasons for the veto, and—to the extent practicable—the estimated fiscal, economic, and budgetary effect of the action. This message must be transmitted within 20 calendar days (excluding Saturdays, Sundays, and holidays) of enactment of the legislation containing the rescinded appropriations. All budget authority rescinded would be cancelled unless Congress, within 20 working days, passes a rescission disapproval bill to restore the appropriations. Those disapproval bills would themselves to subject to veto, with the usual two-thirds vote in each house required to override. In addition, if

Congress does not disapprove the President's message, the President shall reduce the discretionary spending caps for all affected years to reflect the rescissions. The provisions of this bill would be effective through September 30, 2002.

The budgetary impact of this bill is uncertain, because it would depend on the manner in which the line item veto is used by the President and the success of the Congress in overriding vetoes; however, potential savings or costs are likely to be relatively small. Discretionary spending currently accounts for only one-third of total outlays and is already tightly controlled. While the bill, as reported, also allows the President to rescind an appropriation for a mandatory program, such a rescission would have no effect on the underlying laws that govern the operations and determine the costs of the program.

By itself, this bill would not affect direct spending or receipts. Therefore, there would be no pay-as-you-go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Enactment of this legislation would not directly affect the budgets of state and local governments. However, the exercise of line item veto authority could affect federal grants to states, federal contributions toward shared programs or projects, and the demand for state and local programs to compensate for increases or reductions in federal programs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contract on this issue is Jeffrey Holland.

Sincerely,

JAMES L. BLUM
(For June E. O'Neil, Director).

X. REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 4. The bill is not a regulatory measure in the sense of imposing Government-established standards of significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 4, as ordered reported. Paperwork is now generated by presidential compliance with the Impoundment Control Act. Additional paperwork beyond the current level would be modest.

XI. ADDITIONAL AND MINORITY VIEWS

S. 4, ADDITIONAL VIEWS OF SENATORS GLENN, NUNN, LEVIN, PRYOR, AKAKA

The enactment of S. 4 would result in a massive shift of power to the Executive Branch from the Legislative. When Dr. Robert D. Reischauer, Director of the Congressional Budget Office (CBO) testified on January 12, 1995, at a joint hearing between our Committee and the House Committee on Government Reform and Oversight, he said S. 4 would "provide the President with greater power than a constitutionally approved item veto."

Clearly, S. 4's impact on the fundamental balance of powers laid out in the Constitution should be carefully considered. Clearly, it should be the subject of thoughtful recommendations to the full Senate.

However, on March 2, 1995, the Governmental Affairs Committee, against objections from our side, voted to report S. 4 without recommendation because there were not enough votes in Committee to favorably report the bill. In addition, amendments to correct technical problems in the bill—which would have had bipartisan support—were ruled out under a "no-amendment-in-committee" strategy.

While S. 4 is called a line-item veto bill, S. 4's rescission authority does not require the president to pick a specific budget item or line item. S. 4 provides that "the President may rescind all or part of any budget authority." S. 4's enhanced rescission authority allows the President to reach into dollar amounts, not just lump sum items. Such "reduction authority" has been given to Governors in less than a dozen States.

S. 4 would allow Presidential proposals to become law unless the Congress passes a "rescission disapproval bill" within 20 days. S. 4 contains no requirement for Committees to report the disapproval bill. The motion to proceed to this bill is fully debatable—potential filibuster—as are conference motions on any disapproval bills.

If a "disapproval bill" managed to reach the President's desk, he presumably would veto it. In that event, S. 4 is a prescription for gridlock if you have a President from one party, and one body of Congress from the other. Under these circumstances, a President would only need ⅓rd of either body to rescind spending determined by a majority of the Congress.

S. 4 proposes to fundamentally change the balance of powers between the Executive and Legislative Branches; and alters the budget process. At present, both the President and the Congress have opportunities to affect budget priorities. The President formulates a budget and the Congress amends this budget. The President can veto a budget reconciliation bill. When the Congress passes appro-

priations bills based on the budget, the President has a choice of signing or vetoing them.

S. 4 would add additional steps. After going through the regular budget process, the President could propose an enhanced rescission. Then, Congress could pass a rescission disapproval bill within twenty days, which the President could then veto. After all these steps, spending items adopted by a majority vote in the Congress could only be reinstated by 67 votes in the Senate and 290 votes in the House.

In his January 12th testimony before our Committee, Dr. Reischauer, Director of CBO, testified about the experience of the sates with line-item veto. He said:

> Evidence from the states suggests that the item veto has not been used to hold down state spending or deficits, but rather has been used by states governors to pursue their own priorities. * * * For example, a study in the use of the item veto in Wisconsin over a 12-year period found that governors were likely to use the authority to pursue their own policies or political goals but not to reduce spending. Similarly, a comprehensive survey of state legislative budget officers found that governors were likely to use the item veto for partisan purposes, but unlikely to use the veto as an instrument of fiscal restraint.

S. 4 proposes to change the way a bill becomes a law and we ask the question: "For what purpose?"

The Committee report reads: "The purpose of enhanced rescissions is to confront the serious problem of pork-barrel spending. Each year wasteful and parochial projects—unlikely to pass on their own merits—are tucked into omnibus bills."

An amendment was offered at our mark-up that would have limited S. 4's enhanced rescission authority to items that have not been previously authorized. It was offered on the grounds that if there is to be a significant transfer of the Legislature's spending authority to the Executive, it should be transferred as a penalty for legislative abuse. In other words, the Committee had an opportunity to limit S. 4's purpose directly to the serious problem of pork-barrel spending. This amendment was withdrawn after the Chairman stated that he would report S. 4 out without amendment and, further, he had the votes to defeat any amendment to S. 4.

The Minority staff on the Governmental Affairs Committee expressed interest, prior to mark-up, in working with the Majority staff of the Committee to develop technical amendments—to be offered at mark-up—to at least make S. 4 workable. The Minority had met with the Majority staff on this issue. One amendment to correct the problems of filibustering the appointment of conferees on a disapproval bill had already been drafted. However, the Majority staff then indicted that the Chairman had decided not to have any amendments adopted at mark-up. We have to ask the question: "Why go through the charade of a Committee mark-up?"

Another problem we had wanted to correct was the issue of budget authority. S. 4 does not define "budget authority." Budget authority is defined in the Budget Act as both appropriations and entitlement spending. We had testimony before this Committee on

February 23, 1995 that, as currently drafted, a President could line-item veto a Social Security cost-of-living adjustment. As currently drafted, S. 4 threatens other appropriated entitlement and non-appropriated entitlement spending. We had wanted to work with the Majority staff to rectify this problem before the bill was sent to the Senate floor.

There were other issues which Members on our side of the aisle would have liked to address at the Committee mark-up, but—for the reasons outlined above—we did not.

In closing, we would like to include an excerpt from the Committee's mark-up transcript:

> Senator GLENN. "Mr. Chairman, if I might ask, you announced a no-amendment policy, as I understood your opening statement. Are we to assume that no matter what the merits of the amendments are, that on the Republican side they will be voted down, regardless of whether there is merit to them or not?"
>
> Chairman ROTH. "That's correct."

DAVID PRYOR.
JOHN GLENN.
SAM NUNN.
DANIEL K. AKAKA.
CARL LEVIN.

XII. Changes in Existing Law

This bill represents a new title, Title XI, to be added at the end of the Impoundment Control Act of 1974.

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